

WATER ALLOCATION PROGRAM DEVELOPMENT WATER RIGHTS SUBCOMMITTEE MEETING

MINUTES OF MEETING

9/2/03

Members Present:

Dale Thompson
Annette Jacques
Al Bettencourt
Bill Stamp III
Gregory Schultz
Fred Crosby

Guests

Jillian Colby, student

WRB Staff Present

Connie McGreavy
Kathy Crawley

Members Absent:

Kendra Beaver
Christopher D'Ovidio
Mary Ellen McCabe
Rebecca Partington
Ken Payne
Paul Ryan
John Spirito
John Garry
Caroline Karp
Brian Bishop
Jon Schock

- I. CALL TO ORDER:** With a quorum present, Mr. Thompson called the meeting to order at 1:35 PM.
- II. APPROVAL OF MINUTES:**
On a motion by Ms. McGreavy, seconded by Ms. Jacques, the minutes of the August meeting were approved.
- III. ITEMS FOR ACTION**
 - A. Submission of Groundwater Report**
- IV. ITEMS FOR DISCUSSION:**
 - A. Review Report on Groundwater:**
Discussion on Rhode Island's groundwater rights not being based on absolute ownership. Note about how science has now allowed us to treat groundwater in ways that were not possible before. Very little case law on groundwater – mostly dealing with pollution of groundwater. Role of reasonableness. Discussion of possible recommendations for report. Similarities of treatment between groundwater and surface water. Need for information on wells, and incentives to provide information. Importance of information, but not necessarily individual information – aquifer by aquifer level information. Need to establish methods for triggers. Discussion of rough split on ground versus surface water quantities (84% vs. 16%).
 - B. Discuss Committee Recommendations:**
 1. Regulatory Authority
 2. Water Rights: Surface Water and Groundwater
 - a. Discussion of reasonable use riparian for surface water: movement away from natural flow theory of English common law; domestic on-tract has first priority; idea that reasonable use works well as long as no conflict – i.e. plenty of water.
 - b. American Rule of Reasonable Use for Groundwater: beneficial use – as long as for good use
 - c. Possibly shift determination of what is reasonable from the courts to the WRB.
 3. General Recommendations
 - a. Disagreement over ownership clause. This comes out of Tyler v. Wilkinson, which discusses the right to use water, not the ownership of the resource. Does not apply to waters wholly contained within boundaries. Can have dissenting opinions in the

- document (appearing in a different footnote).
- b. 2nd clause does not require mandatory reporting; can use DEM TMDL studies to build inventory.
 - c. 3rd: not trying to change premise of reasonable use.
 - d. 4th: connection of ground and surface water resources
 - e. 5th: connections with growth; localities should be aware of water rights in land use decisions
 - f. 6th: RI has drought plan: SGP 724; should check to make sure that credits for farmers are incorporated in drought plan; modify to incorporate ag credit.
- 4. Priorities: modification of clause: remove “by permits”, and replace with “...”
 - 5. Alternative systems
 - a. Discussion about market systems: need to have reporting under market system, or not have right to sell; need to carefully define right to sell, with baselines; idea that could offer covenant to provide date to perfect the right; little experience with market systems – experience of California in state drought water bank (1991-92); way it worked: farmers fallowed fields, and then state sold saved water to cities; fairly active markets within irrigation districts – they own the water and distribute to members, so no approval needed when trading with members
 - b. RI would be in uncharted territory if moved to market program – no other state has wholly market approach
 - c. Trades versus pricing approach: during drought, price goes up, and this leads to cutbacks; what do with revenues? Some go in for administrative costs, and others used for cost sharing for implementing new techniques for water saving (such as BMPs for agriculture).
 - d. Under regulatory approach, go to restrictions, again can be offset by cost-sharing.
 - e. What about compensation? Again could have cost-sharing. Also, under market approach, can allocate grandfathered permits, which then can be sold for compensation. Also, can allocate permits through auction, and then use auction revenues for cost sharing. Remarks that system seems complex, against regulation.
 - f. Another possibility is combination of systems.
 - g. Question about whether new users should bear all of the burdens: isn’t the state trying to attract new business?
 - 6. Recap of recommendations
 - a. Nothing mandatory until drought
 - b. Reporting: user by user, or aquifer by aquifer
 - c. Reminder that it is fine to suggest other alternatives; just need to get into writing
 - d. Gathering of more information helpful
 - e. Importance of focusing on drought – need political support; lack of preparation before extended drought could lead to harsh reactions

C. Report Generation

- 1. Status of Annotated Outline: working to bring in more sections of code; perhaps have others comment on code
- 2. Report Generation and Review

V. OTHER BUSINESS

VI. ADJOURNMENT: The meeting adjourned at approximately 3:30 PM.

Respectfully submitted,

Dale B. Thompson
Roger Williams University School of Law

**Note: For more information on Water Allocation, visit: <http://www.seagrant.gso.uri.edu/scc/wrb/index.html>.*